

Absence in the Workplace

Unite guide for members



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■ INTRODUCTION

Absence management is a key issue for employers but more importantly for employees. Unite believes there is an increasing link between attendance and the health and well-being of employees. It is commonly recognised that employees who are engaged in their work, feel they are fairly rewarded, have a positive and good place to work and, most importantly, believe they have some influence and control over their job are much less likely to take time off.

Employers have a 'duty of care' to protect employees from risks to their health and safety. Employers should also recognise the importance of good morale and motivation at work by ensuring that workers have a safe and positive environment in which to work in. Unite believes that 'good work' is the cornerstone for managing and controlling absence amongst workers.

It is clear that workers are under more and more pressure to perform at work. It is also clear that many of today's workers are engaged in more complex and more stressful jobs. This in itself can create a situation where short term absences arise as a result of stressful working conditions. This in turn produces a knock-on effect as increased pressure is placed on workers covering the workload of absent colleagues.

Unite believes that companies need to take a responsible attitude to high absence rates. There are a number of key initiatives that employers and employees can take to alleviate problems with absence. The most fundamental are line manager training and a clear set of absence guidelines negotiated with the workers and the union involved, which enables workers to avoid taking short term absences to cover other domestic eventualities.

The most effective way of dealing with sickness absence is for workers, representatives and the company concerned to deal with the underlying causes. This could be the illness of an individual or could be a wider structural problem that is affecting many workers in a section or the whole company. The recording of absence data will give workers and the company an idea of the nature and extent of any problem. The key in this process is communication and consultation.

Employers should recognise any structural issues and should be willing to address the problems in a positive and pro-active way. Workers should also be keen to acknowledge if there are inherent problems within the workplace and be prepared to negotiate with the company over absence management policies and the implementation of any procedure required.

Unite believes that it is vital that workers and management work together to help prevent illness, injury and disability which could lead to long term sickness absence and ultimately job loss.

■ PAYMENT FOR SICK LEAVE

Statutory sick pay

An employer must provide its employees with details of their sick pay entitlement as part of the written statement of employment particulars. Many employers provide an occupational sick pay scheme that is more generous than Statutory Sick Pay (SSP).

To claim statutory sick pay the employee must notify their employer. The employer may have its own notification procedure but it cannot insist that the employee notifies them in person nor insist on a doctor's certificate for the first seven days of absence for this purpose.

Pregnant women may claim statutory sick pay. The only exclusion is for a pregnancy related illness from four weeks before the expected date of confinement, when statutory maternity pay will be paid.

Occupational Sick Pay

Some employers will provide an occupational sick pay scheme. The scheme must pay at least the equivalent of statutory sick pay. As occupational sick pay schemes are a contractual entitlement the employer can set its own rules and guidelines. Union representatives should do all they can to ensure that the workers have a voice in the setting up and the implementation of any such scheme.

If there is no written agreement and the contractual entitlement is in dispute then what has happened in the past will be taken into consideration by any Employment Tribunal.

■ DISMISSAL WHILE SICK

There are a number of questions arising over whether someone can be dismissed while sick. The short answer to this is yes, but it depends on the circumstances. However there are a number of important points that need to be considered about dismissal, and any Unite representative will need to ensure proper procedure is followed.

Fair reasons for dismissal include a 'capability' dismissal. This relates to skill, aptitude, health or any other physical or mental quality. This means a worker can be dismissed due to a poor sickness record, but the employer will usually have to show that they tried to establish the workers medical condition and examined alternatives to dismissal. If the worker in question has a disability within the meaning of the Disability Discrimination Act 1995, then there is additional protection afforded to the worker.

It is also important to note that the worker's capabilities must be assessed at the date of dismissal. The employer has no obligation to monitor the decision to dismiss by taking account of any change in circumstances between the date of dismissal and date of appeal.

The cause of the sickness absence does not necessarily matter. If a worker is off sick after an accident, or having been the victim of a crime or even following a work-related injury, it does not automatically mean that dismissal will not result from their sickness absence.

In all cases dismissal must be 'reasonable in all the circumstances'. Employment Tribunals will take into account the size of the company, difficulties in arranging short-term replacements, the workers length of service and the nature of the illness when deciding whether the employer's decision to dismiss the worker was 'reasonable'.

An employer dismissing someone for sickness absence is required to have given warnings, consulted a doctor about the nature of the illness and consulted the worker about alternatives to dismissal. At all times members are advised to consult their union representative for advice and support.

The employer is required to investigate the sickness and absence. The investigation may take a number of forms depending on the individual circumstances. This may include discussing the facts with the worker or alternatively with the employee's doctor. Where the member's doctor is consulted the member is required to give permission and should always insist on seeing the doctor's report before it goes to the employer.

The company may also commission a report from an occupational health specialist. In such cases the union representative should ask to receive a copy, (subject to the member's agreement).

The dismissal procedure on grounds of sickness absence should reflect the need to ensure that each case is thoroughly reviewed, that all the facts have been checked and that all the options have been explored before dismissal is considered. Senior union and management representatives should be involved in considering any dismissal case. At this stage the union full time official should be consulted by the workplace representative.

At any dismissal hearing the employee, or the workplace representative, is entitled to make representations and submit supporting evidence. If the employee is still on sick leave then the employer must establish when the employee expects to return. All relevant facts should be investigated including employee's length of service, employer's need for the employee, cost of replacing the employee and the loss of a trained, experienced worker.

All other alternatives need to be discussed and exhausted before any decision to dismiss is to be considered. This could include short term replacements, working part-time or shortened hours and the availability of other work within the company.

■ SICKNESS ABSENCE POLICY

To be able to deal effectively with sickness absence Unite workplace representatives should ensure that they are involved when a sickness absence policy and procedure is being devised by the employer.

A good sickness absence policy will reflect any statutory regulations and improve upon them; will be fair to the workers allowing them to know exactly what is required of them if they do become sick; it will also be firm, ensuring that any abuse of the policy will have a clear procedure for dealing with alleged problems.

It is important that health and safety representatives understand the importance of working with employers to help formulate a sickness absence policy. The Health and Safety Executive (HSE) has confirmed the link between effective union safety representatives and better managed sickness absence. The policy should reflect an agreement between Unite workplace representatives and the employer detailing how the absence of employees in the workplace is managed.

Unite workplace representatives should consider the following when negotiating a sickness absence policy.

Principles:

- **Good faith**

The policy and procedures will be applied to all members of staff in a consistent manner and without discrimination.

- **Fairness**

Any action taken will be reasonable and proportionate. Employees involved are entitled to have a fair hearing.

- **Confidentiality**

Information relating to sickness absence will only be shared with individuals who have a need to know, (this would normally include workplace representatives).

- **Representation**

If issues around attendance arise within these procedures and a formal approach is required to deal with them, an employee will be entitled to be accompanied by a trade union representative or a work colleague.

■ SICKNESS ABSENCE PROCEDURE

The following issues need to be addressed in any sickness absence procedure:

- All workers should be informed of all policies and procedures relating to sickness absence. This should include reference to equal opportunities, disability, workplace health, and drug and alcohol abuse policies.
- How and when employees should report their sickness absence. The usual process for this is for staff to notify their line manager, (or an alternative member of staff or HR, if not available), by 10.00 am. This would be adjusted for any shift working arrangements. If the reason for the sickness absence is of a sensitive nature then the employee should have the option to notify HR directly. There should also be provision for someone to make contact on behalf of the employee and explain the situation if necessary.
- Sick pay levels, especially in relation to company sick pay should be set out and include any qualifying days, the need for self-certification or when a doctor's note is required.
- Procedures that managers must follow when dealing with absence. This would include dealing with unauthorised absence and ensuring employees know to contact the Unite representative for advice and support.
- Outline how records of absence will be kept and what these can and cannot be used for. The sharing of absence monitoring reports and what form they will take.
- The role the trade union has and the rights that safety representatives have including the role of the health and safety committee. The role of safety representatives in providing advice and support and rights to be represented by a workplace representative.
- It would also be useful to have a section about what happens when someone is on leave and falls ill. There should be clear guidelines that state under which circumstances leave will be reinstated if sickness happens while on leave.

- Maintaining contact with employees who are on sick absence should be done in a supportive not intimidatory manner. There should be safeguards to protect employees from intrusive telephone calls and visits by over-zealous managers. There should be a clear justification for any home visit and the criteria for these must be clearly set out.
- The employer should provide a good physical work environment and a safe and healthy workplace. There should also be ongoing efforts to improve job satisfaction, properly trained line managers, worker friendly working systems and support for people with children and those with caring responsibilities.
- Comprehensive rehabilitation procedures should be included, outlining the help and support that will be on offer to aid an employee's transition back to work. For any worker with a disability there are clear guidelines in the Disability Discrimination Act 1995.
- The procedure should include arrangements for any return to work interviews regardless of length of sickness absence. Such interviews must give the employee the opportunity to raise any issues regarding their sickness absence and whether there are any underlying problems such as bullying or harassment.
- Provision for management training on the correct implementation of the sickness absence policy should be included and should emphasise the company's healthy workplace commitment. Policies will also need to be developed to decide how the union and management can address the long term health needs of the workforce.
- Consider the introduction of a health credits scheme. This is paid time off for mental health days or hours and can be used by the worker for specific instances that the worker has to deal with and which could cause undue stress and might mean the worker would take sick leave to cover. It is recognised that the implementation of these days improves motivation, aids well-being at work and also reduces stress.
- Identify in the policy whether the company will retain the services of any occupational health professionals. This could include nurses and/or doctors. Outline the procedure for when a visit to occupational health will be necessary and what the outcome of any visit could entail.

■ ROLE OF OCCUPATIONAL HEALTH PROFESSIONALS

Occupational health professionals have a central role to play in allowing people to maintain and improve their health in their workplace. They have comprehensive training covering both physical and psychological conditions and are also skilled in analysing the practical consequences of illness or disability.

They also have a central role in advising employers about the needs of sick and disabled workers when they return to the working environment. Occupational health professionals also have a role to play in risk assessments and risk monitoring and environmental or worksite modifications.

The Occupational Health Service should be highly confidential and fully funded by the employer. The service should be completely independent of management and independent of the employer's absence control procedures and disciplinary procedures.

The service should concentrate on working to prevent risks, provide an early detection of any underlying structural problems, provide health supervision during employment, have a role in relation to work-related stress and provide advice and support to those returning to work after injury or ill health. There should also be the facility for employees to refer themselves for assistance or advice without having to go through their line manager

For most people their GP is their first point of contact when they become ill. It is clear that where long term sickness absence is concerned then employer links with the employee's own GP or medical advisor should be encouraged. The opinion of the occupational health doctor cannot just override that of the GP.

Many employers will accept a medical certificate as confirmation of a genuine illness; however the medical certificate itself has no legal standing. So, if the employer suspects an employee of malingering or being fraudulently absent the employer is not obliged to accept a doctor's certificate at face value. If there is any conflicting situation with the opinion of the GP and an occupational health professional then a third, completely independent opinion should be sought. The employee has the right to see any medical opinions or advice relating to their sickness, and should have the right to challenge these opinions if they believe them to be wrong or misleading.

■ ACCESS TO MEDICAL RECORDS

The Access to Medical Reports Act (1998)

Under this Act an employer must seek consent in writing from an employee before requesting a report of their medical record. An employee is entitled to refuse permission to allow an employer to apply to their doctor for a medical report before it is passed to an employer. The employee can also withhold consent to the medical report being supplied to their employer.

The employee has the right to have a copy of the report before it is forwarded to the employer. The employee can also query items in the report and that if the doctor refuses to accept it, the employee's objection may be attached to the report.

The Access to Health Records Act 1990 gives individuals the right to apply for access to records relating to them that are held by a health professional such as a company doctor.

It is vital that if a workplace representative finds they are in a situation where they need to resort to the law then the rep must contact the Unite full time official. It is very important that any legal advice given to members is correct and justifiable; therefore contact your regional office or full time official for advice, information and support.

■ USEFUL CONTACTS

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ES/3641-7/RG ABSENCE/3-12

